

S/N: 10/748,306

Attorney Docket #: P18462

REMARKS

Applicant appreciates the Examiner's attention to the above referenced application. Reconsideration of the application is respectfully requested. Claim 40 was objected to because claim 40 depended on canceled claim 39. Claims 1, 4-8, 11-13, 16-20, 37, 40, and 41 were rejected. By virtue of this Amendment, claims 7, 8, 16, 18-20, and 40 have been amended. As indicated above, claims 42-47 have been added. Claims 1, 4-8, 11-13, 16-20, 37, and 42-47 are currently pending in the application.

35 USC § 101 Rejection of the Claims

Claims 13, 16-20, 37, and 40-41 were rejected under 35 USC § 101 as being directed to non-statutory subject matter. Applicants believe this rejection has been overcome in view of the amendments indicated above and the remarks that follow.

According to the Office Action, these claims mention the use of a storage medium, which was described on page 25 of the specification in reference to a memory including an electrical, optical, or electromagnetic conductor. The Office Action asserts that "[s]uch conductor, can be propagated signals; which are non-statutory." Applicants' specification has been amended to remove reference to "e.g. memory including an electrical, optical, or electromagnetic conductor."

Accordingly, Applicants believe the rejection of claims 13, 16-20, 37, and 40-41 has been overcome.

35 USC § 112 Rejection of the Claims

Claims 8 and 19 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 8 and 19 have been amended to correct the antecedent basis for the term "handshaking packet." Applicants believe the rejection of claims 8 and 19 has been overcome in view of the amendments shown above.

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35 USC § 103 Rejection of the Claims

Claims 1, 11-13, 37 and 41 were rejected under 35 USC § 103(a) as being unpatentable over *Inanoglu* (U.S. Patent No. 7,486,740), in view of *Hammerschmidt* (U.S. Publication No. 2004/0151146), further in view of *Walton et al.* (U.S. Publication No. 2005/0135318). Claims 4 and 16 were rejected under 35 USC § 103(a) as being unpatentable over *Inanoglu*, in view of *Hammerschmidt*, further in view of *Walton*, and further in view of *Suzuki et al.* (US Patent No. 7072409). Claims 5-7 and 17-18 were rejected under 35 USC § 103(a) as being unpatentable over *Inanoglu*, in view of *Hammerschmidt*, further in view of *Walton*, and further in view of *Suzuki*, further in view of *Weber et al.* (US Patent No. 7212788). Claims 8 and 19-20 were rejected under 35 USC § 103(a) as being unpatentable over *Inanoglu*, in view of *Hammerschmidt*, further in view of *Walton*, further in view of *Suzuki*, further in view of *Weber*, and further in view of *Corbett et. al* (US Patent No. 7239894). Claim 40 was rejected under 35 USC § 103(a) as being unpatentable over *Inanoglu*, in view of *Hammerschmidt*, further in view of *Walton*, and further in view of *Weber*.

Applicants respectfully traverse this rejection in view of the remarks that follow.

The Office Action relies in-part on *Inanoglu* as a basis for all the 35 USC § 103(a) rejections. But, the filing date/35 USC 371(c) date of the *Inanoglu* reference is 04-02-2004, *which is after* the 12-29-2003 filing date of the present application. As stated in M.P.E.P. §2141.01, "[b]efore answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102." *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987). Subject matter that is prior art under 35 U.S.C. 102 can be used to support a rejection under section 103. The *Inanoglu* reference, however, does not qualify as a prior art reference under any provision of 35 USC § 102 and as a result, may not be used as a basis for rejection under 35 USC § 103(a).

It is well established that obviousness requires a teaching or suggestion by the relied upon references of all the elements of a claim (M.P.E.P. §2142). Applicants have shown that the elements taught by the *Inanoglu* reference may not be applied as prior art so that, by default, the combination is also devoid of at least some of the features of

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Applicants' claimed invention. Accordingly, Applicants respectfully traverse the rejection of claims 1, 4-8, 11-13, 16-20, 37, and 40-41.

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CONCLUSION

Applicant respectfully requests reconsideration in view of the remarks and amendments set forth above. If the Examiner has any questions, the Examiner is encouraged to contact the undersigned at 480-715-5432.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited either via facsimile or via the United States Postal Service addressed to: MS Amendment, United States Patent and Trademark Office, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 29 day of July 2009.

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